

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

RICKEY LAND AND CATTLE COMPANY (a Corporation),
Appellant,

vs.

JAMES NICHOL, F. FEIGENSPAN, ANGUS McLEOD, MARY
T. SHAW, DEWITT CROWNINSHIELD, M. J. GREEN,
C. F. MEISSNER, HAMILTON WISE, J. F. HOLLAND,
C. F. HOLLAND, THOS. HALL, E. S. CROSS, D. J.
BUTLER, J. S. SWEETMAN, JOHN COMPSTON, J. C. MILLS,
A. W. GREEN and SPRAGG-WOODCOCK DITCH COMPANY
(a Corporation),
Appellees.

Transcript of Record.

Upon Appeal from the United States Circuit Court
for the District of Nevada.



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*In the United States Circuit Court of Appeals, Ninth
Circuit.*

JAMES NICHOL, F. FEIGENSPAN, ANGUS
McLEOD, MARY T. SHAW, DeWITT
CROWNINSHIELD, M. J. GREEN, C. F.
MEISSNER, HAMILTON WISE, J. F.
HOLLAND, C. F. HOLLAND, THOMAS
HALL, E. S. CROSS, D. J. BUTLER, J. S.
SWEETMAN, JOHN COMPSTON, J. C.
MILLS, A. W. GREEN, and SPRAGG-
WOODCOCK DITCH COMPANY (a Cor-
poration),

Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),

Defendant.

Order Extending Time to Docket Cause.

Good cause therefore appearing, it is hereby ordered, that the time wherein defendant and appellant in the above-entitled action may file the record thereof and docket the case with the clerk of this Court at San Francisco, California, may be enlarged

and extended, so as to extend to and include the 23d day of September, 1906, and it is so ordered.

Dated this 22d day of August, 1906.

W. W. MORROW,
Circuit Judge.

[Endorsed]: No. 1372. United States Circuit Court of Appeals for the Ninth Circuit. James Nichol et al., Complainants, vs. Rickey Land & Cattle Company (a Corporation), Defendant. Order Enlarging Time to Docket Record. Filed Aug. 23, 1906. F. D. Monckton, Clerk. Refiled Sept. 5, 1906. F. D. Monckton, Clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

JAMES NICHOL, F. FEIGENSPAN, ANGUS McLEOD, MARY T. SHAW, DeWITT CROWNINSHIELD, M. J. GREEN, C. F. MEISSNER, HAMILTON WISE, J. F. HOLLAND, C. F. HOLLAND, THOS. HALL, E. S. CROSS, D. J. BUTLER, J. S. SWEETMAN, JOHN COMPSTON, J. C. MILLS, A. W. GREEN and SPRAGG-WOODCOCK DITCH COMPANY (a Corporation),

Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),

Defendant.

Bill of Complaint.

To the Judges of the Circuit Court of the United States for the District of Nevada:

James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, Dewitt Crowninshield, M. J. Green, C. F. Meissner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green and Spragg-Woodcock Ditch Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, bring this, their bill against the Rickey Land and Cattle Company, a corporation organized and existing under the laws of the State of Nevada, and having its place of business at Carson City, county of Ormsby, State of Nevada, and within the District of Nevada, and a citizen of the State of Nevada, and thereupon your orators complain and say:

1. That your orators are citizens of the State of Nevada and residents of Lyon County, Nevada, within the District of Nevada, and that the Spragg-Woodcock Ditch Company is a corporation organized and existing under the laws of the State of Nevada, and has its principal place of business in Lyon County, Nevada, and within said district of Nevada.

2. That the defendant, the Rickey Land and Cattle Company, is a corporation organized and existing under the laws of the State of Nevada, and has

its principal place of business at Carson City, in the County of Ormsby and State of Nevada and within said District of Nevada, and is a citizen of the State of Nevada.

3. That on the tenth day of June, 1902, Miller & Lux, a corporation organized and existing under the laws of the State of California, and having its principal place of business at San Francisco, California, and a citizen of the State of California, exhibited to and filed in this court its bill of complaint against one Thomas B. Rickey and against your orator and against many other persons; which suit is number 731 on the equity docket of this court.

4. That thereafter on the said tenth day of June, 1902, this court duly issued its writ of subpoena in said suit upon said bill of complaint directed to the said Thomas B. Rickey, your orators and the other persons made defendants by said bill; and thereafter in the said tenth day of June, 1902, said writ of subpoena was duly served by the marshal of this district upon the said Thomas B. Rickey, and was thereafter served upon your orators and upon the other defendants in said suit.

5. That thereafter the said Thomas B. Rickey entered his appearance in said suit and thereafter filed in this court his plea to the jurisdiction of said court, which plea was overruled by this Court and the said Thomas B. Rickey was by this Court ruled to answer to said bill of complaint and he has answered the same.

6. That your orators and the other defendants in said suit have entered appearances in said suit; and said suit is now pending and undetermined in this court as to all of the defendants thereto.

7. That in and by the said bill of complaint the said Miller & Lux (complainant therein) alleged, among other things, that it then was, and for a long time prior thereto had been, the owner, seised in fee and in the actual possession of certain lands situated in the County of Lyon, State of Nevada, in said district of Nevada, in said bill particularly enumerated and described; and further alleged that there is a certain natural stream and watercourse known as Walker River which flows, and from time immemorial has flowed, to, over and upon the said lands, and that said lands include the banks, bed and stream of said river; and further alleged that at divers times therein set forth, the said Miller and Lux, its grantors and predecessors in interest at first appropriated and diverted from said river portions of the waters of said river amounting in all to a flow of nine hundred and forty-three and twenty-nine hundredths (943.29) cubic feet of water per second and that it and they had carried the same from said river to and upon certain lands and used the same for the irrigation thereof, and that the said Miller & Lux was then the owner by such appropriation of certain interests in said appropriated water therein particularly set forth and enumerated; and further alleged that with-

in three years next before the filing of said bill the defendants thereto, including the said Thomas B. Rickey, and your orators, had, and that each of them had diverted the waters of said Walker River at divers places on said river above the said lands of said Miller & Lux and above the points at which the said Miller & Lux so diverts said water, and that a large portion of said water so diverted by the defendant in said suit, is never returned to said river and that said defendants to said suit are continuing the diversions aforesaid and have thereby deprived and are depriving the said Miller & Lux of a large portion of said water to which the said Miller & Lux is so entitled; and further alleged that each of said diversions so made by the defendants to said suit is without right, but that they have so diverted said water and are so diverting the same under a claim of right so to do, and adversely to the said Miller & Lux; and further alleged that by the diversions aforesaid the said Miller & Lux has been deprived and is being deprived of sufficient water to irrigate its lands aforesaid, and is thereby rendered unable, and so long as said diversions are continued, will be unable to irrigate its said lands which it had theretofore been accustomed to irrigate, and is thereby rendered unable and will be unable to properly or successfully cultivate the said lands or to raise crops thereon, and further alleged that if the defendants to said suit, or either of them, has any right to divert any

water from the said river, said rights and each of them are subsequent and subordinate to the aforesaid appropriations so made by the said Miller & Lux, its grantors and predecessors in interest; and further alleged that the matter in dispute in said suit, to wit, the said rights of the said Miller and Lux, so infringed by the said acts of the defendants to said suit exceeds, exclusive of interest and costs, the value of two thousand dollars (\$2,000).

8. That in and by the said bill of complaint, the said Miller & Lux, among other things, pray that the defendants to said suit, including the said Thomas B. Rickey, and your orators be forever enjoined and restrained from diverting any water from the said Walker River above the points where the said Miller & Lux so divert the same in said manner or to said extent as to deprive your orators of any of the water aforesaid and also for general relief.

9. That thereafter, to wit, on the sixth day of August, 1902, and after the filing of the said bill of complaint, and after the service upon the said Thomas B. Rickey of the writ of subpoena in said suit, and after the said Thomas B. Rickey had appeared therein the said Thomas B. Rickey caused the defendant, the Rickey Land and Cattle Company to be organized and incorporated and it was on that day organized and incorporated under the laws of the State of Nevada.

10. Upon and according to his information and

belief your orators aver that the only person really interested in said corporation defendant, or really owning any of the stock thereof is the said Thomas B. Rickey and that the other persons forming the said corporation and holding stock thereof are only nominees of the said Thomas B. Rickey and hold their said stock solely for him and for his benefit.

11. That as your orators are informed and believe, the said Thomas B. Rickey, at the time of the commencement of the suit aforesaid was the owner and had, for a long time theretofore been the orator of certain lands situated on the said Walker River and on certain branches or tributaries thereof, and was diverting certain water from the said Walker River and from the said branches and tributaries thereof, for the irrigation of his said lands and claiming the right so to do.

12. That after the said incorporation and organization of the said Rickey Land and Cattle Company, the defendant herein, the said Thomas B. Rickey conveyed to said corporation all his lands aforesaid and all the rights owned or claimed by him to divert any water from said Walker River and the said defendant corporation has ever since claimed to be the owner of said lands and water rights.

13. That thereafter, to wit, on the 15th day of October, 1904, the said defendant, the Rickey Land and Cattle Company, commenced an action in the Superior Court of the County of Mono, State of Cali-

foria, against your orators and against a large number of persons, which action is numbered 1055 on the register of said Superior Court.

14. That said action was commenced by said defendant as plaintiff therein, by the filing of a complaint in and by which the said defendant (plaintiff therein) alleged, among other things, that it is and had been since the 6th day of August, 1902, the owner, in the possession and entitled to the possession of certain of the lands so conveyed to it by the said Thomas B. Rickey, and further alleged that the said lands constituted one entire contiguous body of land over, through and upon which flows and from time immemorial has flowed a certain branch or tributary of said Walker River called the West Fork of the Walker River, and that said lands and all thereof are and from time immemorial have been riparian to said west fork of said river and situated along and bordering thereupon; and further alleged that the said defendant (plaintiff therein) is the owner in the possession of and entitled to the possession, use and enjoyment of, and has the right to divert and appropriate all the waters of the said west fork of said Walker River and its tributaries in the State of California of the extent of a constant flow of fifteen hundred and seventy-five (1575) cubic feet of water per second; and further alleged that the said Walker River is and from time immemorial has been a natural stream or watercourse having its source in two branches known

as the East Fork of the Walker River and the West Fork of the Walker River and that both of said branches have their sources in the State of California, and from thence flow through the eastern part of the said State of California into and through the western part of the State of Nevada and that said two branches of said Walker River unite in said State of Nevada; and further alleged that the defendants in said action and each of them, including your orators, claims some right, title and interest adverse to the defendant herein (plaintiff therein) in and to said constant flow of fifteen hundred and seventy-five (1575) cubic feet of water per second, or some part or portion thereof in the West Fork of the Walker River, that said right, title and interest so claimed by said defendants and each of them including your orators, in and to said water is without right, and that all claims of them and each of them to the waters of said West Fork of said Walker River are subordinate and subject to the said alleged ownership of the defendant herein (plaintiff therein) and its alleged right to divert and appropriate from said West Fork of said Walker River a constant flow of fifteen hundred and seventy-five (1575) cubic feet of water per second.

15. That in and by said complaint the defendant herein (plaintiff therein) prayed, among other things, that the said Superior Court should adjudge that the defendant herein (plaintiff therein) is the

owner in the possession, use and enjoyment and entitled to the possession, use and enjoyment of and has the right to appropriate and divert all the waters of the said West Fork of the said Walker River in the State of California to the extent of a constant flow of fifteen hundred and seventy-five (1575) cubic feet of water per second, and that said Court further adjudge that neither of the defendants therein, including your orators, has any right, title, interest, claim or estate in or to any of the waters flowing or which may hereafter flow in the said West Fork of the said Walker River in the State of California, when the quantity of water therein flowing is less than fifteen hundred and seventy-five (1575) cubic feet of water per second, and that it be further adjudged that the said defendants and each of them, including your orators, are estopped to claim or assert against the defendant herein (plaintiff therein), its grantees, successors or assigns any right, title, claim, interest or estate in or to any of the waters now flowing or which may hereafter flow in said West Fork of said Walker River in the State of California, when the quantity of water therein flowing is less than fifteen hundred and seventy-five (1575) cubic feet of water per second, and also for general relief.

16. That in the said 15th day of October, 1904, the defendant herein as plaintiff, commenced another action in said Superior Court of said county of Mono, State of California, against your orators and against

a large number of other persons which is numbered 1056 on the register of said court.

17. That said action was commenced by said defendant as plaintiff therein, by filing a complaint in and by which the said defendant (plaintiff herein), alleged among other things, that it is and has been since the sixth day of August, 1902, the owner in possession and entitled to the possession of the rest of the lands aforesaid so conveyed to it by the said Thomas B. Rickey; and further alleged that the said lands constitute one entire contiguous body of land through and upon which flows, and from time immemorial has flowed, certain branch or tributary of said Walker River called the East Fork of the Walker River and that said lands and all thereof are and from time immemorial have been riparian to said east fork and said river and situated along and bordering thereupon; and further alleged that the said defendant (plaintiff herein) is the owner in the possession of and entitled to the possession, use and enjoyment of and has the right to divert and appropriate all the waters of the said East Fork of said Walker River and its tributaries in the State of California to the extent of a constant flow of fifteen hundred and four (1504) cubic feet of water per second; and further alleged that the said Walker River is, and from time immemorial has been, a natural stream or watercourse having its source in two branches known as the East Fork of the Walker River and the

West Fork of the Walker River, and that both of said branches have their sources in the State of California and from thence flowed through the western part of the State of Nevada, and that said two branches of said Walker River unite in said State of Nevada; and further alleged that the defendants in said action and each of them, including your orators, claim some right, title and interest adverse to the defendants herein (plaintiff therein) in and to said constant flow of fifteen hundred and four (1504) cubic feet of water per second, or some part or portion thereof in the East Fork of the Walker River, and that said right, title and interest so claimed by said defendants and each of them, including your orators, in and to said water is without right and that all claims of them and each of them to the waters of said East Fork of the said Walker River are subordinate and subject to the said alleged ownership of the defendant herein (plaintiff therein) and its alleged right to divert and appropriate from said East Fork of said Walker River a constant flow of fifteen hundred and four (1504) cubic feet of water per second.

18. That in and by said complaint the defendant herein (plaintiff therein) pray, among other things, that the said Superior Court should adjudge that the defendant herein (plaintiff therein) is the owner in the possession, use, enjoyment, and entitled to the possession, use and enjoyment of and has the right to appropriate and divert all the waters of the said

east fork of the said Walker River in the State of California to the extent of a constant flow of fifteen hundred and four (1504) cubic feet of water per second; and that said court further adjudge that neither of the defendants herein, including your orators, has any right, title, interest, claim or estate in or to any of the waters flowing or which may hereafter flow in the said East Fork of the said Walker River in the State of California when the quantity of water therein flowing is less than fifteen hundred and four (1504) cubic feet of water per second, and that it be further adjudged that the said defendants and each of them, including your orators, are estopped to claim or assert against defendant herein (plaintiff therein) its grantees, successors or assigns any right, title, claim, interest or estate in or to any of the waters now flowing or which may hereafter flow in said East Fork of said Walker River in the State of California, when the quantity of water therein flowing is less than fifteen hundred and four (1504) cubic feet of water per second; and also for general relief.

19. That on the 5th day of January, 1905, your orators filed in this court in the said suit so brought by the said Miller & Lux against the said Thomas B. Rickey and others, number 731, their cross-bills in and by which cross-bills the said cross-complainants alleged, among other things, that they were and for a long time prior thereto had been, the owners of certain rights in the waters of the said Walker River

and certain appropriations therein made by them, their grantors and predecessors in interest, and further alleged that within three years next before the filing of said cross-bills said Thomas B. Rickey had diverted the waters of said Walker River at divers places on said river above the lands of said cross-complainants and above the points at which said cross-complainants so diverted the same; that a large portion of said water so diverted by the said Thomas B. Rickey is never returned to said river and that he is continuing the diversions aforesaid and has thereby deprived and is depriving the said cross-complainants of a large portion of said water to which they are so entitled; that each of said diversions so made by the said Thomas B. Rickey is without right, but that he has so diverted said water and is so diverting the same under claim of right so to do, and adversely to said cross-complainant; and therein and thereby the said cross-complainant prayed, among other things, that the said Thomas B. Rickey be forever enjoined and restrained from diverting any water from said Walker River above the points where the said cross-complainant diverts the same in said manner or to such extent as to deprive said cross-complainant of any of the water aforesaid, and also for general relief.

20. That thereafter on the 5th day of January, 1905, this court duly issued its writ of subpoena in said cross-suits upon said cross-bill directed to said

Thomas B. Rickey and thereafter on the said 5th day of January, 1905, the said writ of subpoena was duly served by the marshal of this district upon said Thomas B. Rickey.

21. That upon the filing of said second complaint in said Superior Court there was issued out of said court in each of said actions a writ of summons thereupon which is the appropriate process under the laws of the State of California for obtaining jurisdiction over the persons of the defendants in an action; and thereafter, to wit, on the 7th day of January, 1905, and after the service of the said writ of subpoena upon the said Thomas B. Rickey, the said writ of summons was served upon your orators.

22. That under the laws of the State of California an action is commenced in the courts of that State merely by the filing of a complaint and that from and after the filing of said complaint said action is deemed to be pending in the court in which said complaint is filed.

23. That the issues tendered by said complainants in said two actions so brought by the defendant herein as plaintiff, against your orators and said other persons, are so far as concerns your orators, the same issues which were tendered by the said cross-bill of complaint of your orator so filed in this court, so far as the same related to the defendant, Thomas B. Rickey, in said suits.

24. That at the time of the filing by the said defendant herein of its complaint aforesaid the said defendant did not have or claim to have and does not now have or claim to have, any right whatever in or to any of the waters of said Walker River or of any branch or tributary thereof, except such rights, if any, as it acquired by said conveyance to it from the said Thomas B. Rickey.

25. That the defendant herein in and by the actions aforesaid, intended and the necessary effect of said actions is to bring on for trial and determination in said Superior Court the same issues presented by the said cross-bills of complaint of your orators in the said suit so brought in this court, so far as relates to the issues between your orator and the said Thomas B. Rickey, and to obtain from said Superior Court a judgment determining said issues in advance of the determination of the same by this court and thereby to defeat the jurisdiction of this court in the said suit so now pending before it and to hinder and embarrass this court in the trial of said issues and in the enforcement of any decree which this Court may render in the said suit so pending before it; a further prosecution of said actions or either of them as against your orators would therefore be in derogation of the jurisdiction of this court and of the rights of your orators in the cross-suit so brought by him in this court and now pending therein.

26. That the matter in dispute herein, to wit, the right of your orators to maintain their cross-suit

aforesaid without hindrance from or interference by any other court exceeds, exclusive of interest and costs, the sum of two thousand dollars (\$2,000).

And your orators allege that all of the said acts, doings and claims of the said defendant herein are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orators herein. In consideration whereof and for as much as your orators are remediless in the premises at and by the strict rules of the common law and can have relief only in a court of equity where matters of this kind are properly cognizable and relievable, to the end therefore that your orators may have that relief which he can attain only in a court of equity, and that the said defendant may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orators, and that the said defendant, its agents, servants and attorneys and all persons acting in aid of them or either of them, be enjoined and restrained from further prosecuting as against your orators either of the actions so brought by it in the said Superior Court of the County of Mono, State of California, and from taking any further step whatsoever in either of said actions as against your orators, and that your orators may have such further or other relief as the nature of the case may require and to your Honors may seem meet, may it please your Honors to grant unto your orators a writ of subpoena to be directed to said defendant the Rickey Land and Cattle Company, a

corporation, commanding it at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises and fully to stand to perform and by such further order, direction and decree therein as to this Honorable Court shall seem meet.

And may it further please your Honors during the pendency of this suit to issue your writ of injunction enjoining and restraining the said defendant, its agents, servants and attorneys and all persons acting in aid of them or either of them, during the pendency of this suit and until the further order of the Court from prosecuting as against your orators, either of the actions so brought by it in the said Superior Court of the County of Mono, State of California, and from taking any further step whatsoever in either of said actions as against your orators.

And may it further please your Honors to make and issue an order requiring the said defendant the Rickey Land and Cattle Company, to show cause before this Honorable Court at a time and place therein fixed, why said writ of injunction pendente lite as above prayed for, should not be issued and at the same time and as a part of said order to issue your temporary restraining order enjoining and restraining the said defendant, its agents, servants and attorneys and all persons acting in aid of them or either of them until the hearing of said order to

show cause and until the further order of this Court,
from doing all or any of the acts aforesaid.

JAMES NICHOL.

ANGUS McLEOD.

DEWITT CROWNINSHIELD.

C. F. MEISSNER.

J. F. HOLLAND.

THOS. HALL.

D. J. BUTLER.

JOHN COMPSTON.

A. W. GREEN.

F. FEIGENSPAN.

MARY T. SHAW.

M. J. GREEN.

HAMILTON WISE.

C. F. HOLLAND.

E. S. CROSS.

J. S. SWEETMAN.

J. C. MILLS.

SPRAGG-WOODCOCK DITCH CO.

Complainants.

By J. W. SIMPSON,

Agent.

By C. E. MACK,

Solicitor.

MACK & FARRINGTON, and

GEO. S. GREEN,

Solicitors for Complainants.

State of Nevada,
County of Washoe,
District of Nevada,—ss.

J. W. Simpson, being first duly sworn, deposes and says, that he is the duly authorized agent of the complainants above named and that all of the complainants live away from where the court above named is held, and scattered through Lyon, Esmeralda and other counties of Nevada; that their signatures and affidavits to the foregoing bill of complaint cannot be had in time to file the complaint before the court takes recess; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief and that as to those matters he believes it to be true.

J. W. SIMPSON.

Subscribed and sworn to before me this 27th day of
January, 1905.

[Seal]

C. E. MACK,
Notary Public.

[Endorsed]: No. 796. In Equity. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. James Nichol, et al., Complainants, vs. The Rickey Land and Cattle Company, a Corporation, Defendant. Bill of Complaint. Filed January 28, 1905. T. J. Edwards, Clerk. Mack & Far-

rington and Geo. S. Green, Solicitors for Complainants.

Subpoena Ad Respondendum.

No. 796.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

IN EQUITY.

The President of the United States of America, Greeting, to the Rickey Land and Cattle Company, a Corporation:

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Carson City, Nevada, on the 6th day of March, A. D. 1905, to answer to a bill of complaint exhibited against you in said court by James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, Dewitt Crowninshield, M. J. Green, C. F. Meisner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green, Spragg-Woodcock Ditch Co., a corporation, who are citizens of the State of Nevada, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of \$250.00.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 28th day of January, in the year of our Lord one thousand nine hundred and five, and of our Independence the 129th.

[Seal]

T. J. EDWARDS,

Clerk.

Memorandum Pursuant to Rule 12, Supreme Court,
U. S.

You are hereby commanded to enter your appearance in the above suit, on or before the first Monday of March next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken against you pro confesso.

T. J. EDWARDS,

Clerk.

Return.

United States of America,
District of Nevada,—ss.

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein named The Rickey Land and Cattle Company, a corporation, by handing to and leaving a true and correct copy thereof with Thomas B. Rickey, President, Rickey Land and Cattle Company, personally, at

Carson City, Nevada, in said district on the 28th day of January, 1905.

ROBERT GRIMMON,
U. S. Marshal.
By L. Stern,
Deputy.

1 service—\$4.00.

[Endorsed]: No. 796. In Equity. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. James Nichol et al., Complainants, vs. The Rickey Land and Cattle Company, Defendant. Subpoena ad Respondendum. Filed February 2, 1905. T. J. Edwards, Clerk. Mack & Farrington, and Geo. S. Green, Solicitors for Complainants.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

No. —.

JAMES NICHOL, F. FEIGENSPAN, ANGUS McLEOD, MARY T. SHAW, DEWITT CROWINSHIELD, M. J. GREEN, C. F. MEISNER, HAMILTON WISE, J. F. HOLLAND, C. F. HOLLAND, THOS. HALL, E. S. CROSS, D. J. BUTLER, J. S. SWEETMAN, JOHN COMPSTON, J. C. MILLS, A. W. GREEN, and SPRAGG-WOODCOCK DITCH COMPANY (a Corporation),
Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY (a Corporation),
Defendant.

**Order to Show Cause why Injunction Pendente Lite
Should not Issue.**

Good cause appearing by the verified bill of complaint of James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, Dewitt Crowninshield, M. J. Green, C. F. Meisner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green and Spragg-Woodcock Ditch Company, a corporation, complainants, on file herein, it is ordered

that the said defendant, the Rickey Land and Cattle Company, a corporation, show cause before this court on the 13th day of March, 1905, at the hour of ten o'clock A. M., at the courtroom at Carson City, Nevada, why an injunction should not issue pending this suit, according to the prayer of said bill.

And it further appearing to the Court that there is danger of irreparable injury from delay, it is therefore further ordered that until the hearing and determination of said motion for injunction and until the further order of this Court the said defendant, the Rickey Land and Cattle Company, a corporation, its agents, servants and attorneys and all persons acting in aid of them, or either of them, be and they are hereby enjoined and restrained from further prosecuting as against said complainants, that certain action brought on the 15th day of October, 1904, by the Rickey Land and Cattle Company as plaintiff against Miller & Lux, a corporation, said complainants, and others as defendants in the Superior Court of the County of Mono, State of California.

And it is further ordered that a copy of this order be served upon the said corporation defendant and on one of its attorneys (namely on either Mr. James F. Peck, or Mr. Charles C. Boynton, or Mr. William O. Parker) on or before the 6 day of Feb., 1905. And that a bond in the sum of \$1,000 be filed herein by complainant before said order issue.

THOMAS P. HAWLEY,
Judge.

Return.

United States of America,
District of Nevada,—ss.

I hereby certify and return that I served the annexed order to show cause on the therein named Rickey Land and Cattle Company, by handing to and leaving a true and correct copy thereof with Thos. B. Rickey, its president, personally, at Carson City, Nevada, in said district, on the 28th day of Jan., 1905.

I further return that I mailed a copy of the said order to show cause to Peck & Boyton, said T. B. Rickey's attorneys, room 304, Mills Building, San Francisco, Cal., on the 30th day of January, 1905.

ROBERT GRIMMON,

U. S. Marshal.

By L. Stern,

Deputy.

1 service—\$4.00.

Carson City, Nevada, January 31, 1905.

[Endorsed]: No. 796. In Equity. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. James Nichol, et al., Complainants, vs. The Rickey Land and Cattle Company, a Corporation, Defendant. Order to Show Cause Why Injunction Pendente Lite Should Not Issue. Filed February 2, 1905. T. J. Edwards, Clerk. Mack & Farrington, and Geo. S. Green, Solicitors for Complainants.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

No. 796.

JAMES NICHOL, F. FEIGENSPAN, ANGUS McLEOD, MARY T. SHAW, DeWITT CROWNINSHIELD, M. J. GREEN, C. F. MEISSNER, HAMILTON WISE, J. F. HOLLAND, C. F. HOLLAND, THOS. HALL, E. S. CROSS, D. J. BUTLER, J. S. SWEETMAN, JOHN COMPSTON, J. C. MILLS, A. W. GREEN and SPRAGG-WOODCOCK DITCH COMPANY (a Corporation),

Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),

Defendant.

Affidavit of Thomas B. Rickey.

State of Nevada,
County of Ormsby,—ss.

Thomas B. Rickey, being duly sworn, deposes and says: That he is one of the defendants in the bill of complaint in the action commenced herein, No. 731, wherein Miller & Lux, a corporation, is complainant, and Thomas B. Rickey, and others, are defendants;

and that he is, and since its organization has been, the president of the Rickey Land and Cattle Company, a corporation, defendant herein; that he is not now, nor has he at any time since the organization of said corporation, been the manager of said corporation; that the manager of said corporation is, and at all times since the organization has been, one Charles Rickey, and that the active management of the said corporation and its affairs, has been conducted by the said Charles Rickey.

That in each of the actions mentioned herein as having been commenced by the said Rickey Land and Cattle Company in the county of Mono, State of California, a summons addressed to the defendants in said actions respectively was issued out of said court in due form, as required by the laws of the State of California. That after the date of the issuance of said summons, and prior to the 28th day of December, 1904, the said summons so issued in said suits commenced in said Mono county, State of California, were served upon each of the defendants named in said suits, who are complainants herein. That each of said complainants herein, defendants in said actions so commenced in said Mono county, State of California, has appeared in said actions so commenced in said Mono county, State of California, and filed his and its demurrer to the complaints in said actions, stating as grounds of demurrer that the complaint did not state facts constituting a cause of

action, and that the Court did not have jurisdiction; and the said Superior Court of the said county of Mono, State of California, has, since the 28th day of December, 1904, had jurisdiction of each of said complainants herein, as defendants in said actions so commenced in said county of Mono, with full power and jurisdiction to adjudge all the rights of said complainants herein as against the cause of action and rights alleged by the Rickey Land and Cattle Company, a corporation, in the complaints in said actions so commenced in said county of Mono. That by the laws of the State of California, an action is commenced in the Superior Courts of said State when the complaint is filed in said courts. That by the laws of the State of California, it is provided: "The clerk must endorse on the complaint the day, month and year, that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued, and if the action be brought against two or more defendants who reside in different counties, may have a summons issued for each of such counties at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing, or by appearing and answering, or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others, may be served or appear after the year, at any time before trial. 'The sum-

mons must be directed to the defendant, signed by the clerk, and issued under the seal of the Court, and must contain: 1. The names of the parties to the action, the court in which it is brought, and the county in which the complaint is filed. 2. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within thirty days, if served elsewhere. 3. A notice, that, unless the defendant so appears and answers, the plaintiff will take judgment for any money or damages demanded in the complaint as arising upon contract, or will apply to the Court for any other relief demanded in the complaint. The style of all process shall be: 'The People of the State of California,' and all prosecutions shall be conducted in their name and by their authority. The summons may be served by the sheriff of the county where the defendant is found, or by any other person over the age of eighteen, not a party to the action. A copy of the complaint must be served with the summons upon each of the defendants. When the summons is served by the sheriff, it must be returned, with his certificate, of its service, and of the service of any copy of the complaint, where such copy is served, to the office of the clerk from which it is issued. When it is served by any other person, it must be returned to the same place with an affidavit of such person of its service, and of the service of a

copy of the complaint, where such copy is served. The summons must be served by delivering a copy thereof, as follows: 1. If the suit is against a corporation formed under the laws of this State, to the president or other head of the corporation, secretary, cashier, or managing agent thereof. 2. If the suit is against a foreign corporation or a nonresident joint stock company, or association, doing business and having a managing or business agent, cashier, or secretary within this State; to such agent, cashier, or secretary. 3. If against a minor under the age of fourteen years, residing within this State, to such minor, personally, and also to his father, mother, or guardian; or, if there be none within this State, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed. 4. If against a person residing within this State, who has judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed; to such person, and also to his guardian. 5. If against a county, city or town; to the president of the board of supervisors, president of the council or trustees, or other head of the legislative department thereof. 6. In all other cases, to the defendant personally.” It is provided by the laws of the State of California, in section 412, of the Code of Civil Procedure of said State, as follows: “Where the person on whom service is to be made resides out of the

State; or has departed from the State; or cannot, after due diligence, be found within the State, or conceals himself to avoid the service of summons; or is a foreign corporation having no managing or business agent, cashier or secretary, within the State, and the fact appears by affidavit to the satisfaction of the Court, or a Judge thereof; and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action; or when it appears by such affidavit, or by the complaint on file herein, that it is an action which relates to or the subject of which is real or personal property in this State, in which such person defendant or foreign corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part in excluding such person or foreign corporation from any interest therein, such court or Judge may make an order that the service be made by the publication of the summons." It is provided by the laws of the State of California, in section 413 of the Code of Civil Procedure, of said State, as follows: "The order must direct the publication to be made in a newspaper, to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; but publication against a defendant residing out of the

State, or absent therefrom, must not be less than two months. In case of publication, where the residence of a nonresident or absent defendant is known, the Court or Judge must direct a copy of the summons and complaint to be forthwith deposited in the post-office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the State is equivalent to publication and deposit in the postoffice, and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication."

It is provided by the laws of the State of California, in section 749, of the Code of Civil Procedure of said State, as follows: "Service may be made by publication in actions relating to or the subject of which is real property in this State, when any defendant has or claims any adverse interest or estate therein, and where the person on whom the service is to be made resides outside of the State, or cannot, after due diligence, be found within the State, or conceals himself to avoid the service of summons, or is a foreign corporation having no managing or business agent, cashier, or secretary within the State, and the fact appearing by affidavit, to the satisfaction of the Court or Judge thereof, and it also appearing by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is

a necessary or proper party to the action, such judge may make an order that the service be made by publication of summons. Service by publication, and proof of service of a copy of the summons and complaint in actions under this title shall be sufficient, if made in accordance with sections four hundred and thirteen and four hundred and fifteen of this code.” It is provided by the laws of the State of California in section 416 of the Code of Civil Procedure of said State, as follows: “From the time of the service of the summons and of a copy of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the Court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him.”

It is provided by the laws of the State of California, in section 738 of the Code of Civil Procedure of said State, as follows:

“An action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim; provided, however, that whenever in an action to quiet title to, or to determine adverse claims to, real property, the validity of any gift, devise, or trust, under any will, or instrument pur-

porting to be a will, whether admitted to probate or not, shall be involved, such will or instrument purporting to be a will is admissible in evidence; and all questions concerning the validity of any gift, devise, or trust therein contained, save such as under the constitution belong exclusively to the probate jurisdiction shall be finally determined in such action; and provided, however, that nothing herein contained shall be construed to deprive a party of the right to a jury trial in any case, where, by the law, such right is now given." That by the laws of the State of California, the summons issued in the Superior Court is the process, by the service of which the Superior Courts of said State acquire jurisdiction of defendants in actions therein, where the action is not an action in rem. That under the laws of the State of California, a person or corporation may commence and prosecute an action to final judgment in the Superior Court of said State to quiet and determine his or its title to real estate and water, and the use of water, flowing in the streams in said State, against any person or corporation claiming an adverse interest or title to such real estate, or to such water, or to such use of water. That in said actions so commenced in the Superior Court of Mono County, after the issuance of said summons therein, and before the 28th day of October, 1904, an affidavit was filed in said action in said Mono County on behalf of plaintiff in said action showing

and affirming that the said individual complainants herein did not reside in the State of California, and that said individual complainants reside in the State of Nevada; and in said affidavit the postoffice addresses and residences of each of said individual complainants herein, who were defendants in said actions, were stated, and it was further in said affidavit stated and affirmed that the residence and principal place of business of each of said corporations complainants herein, was at Yerington, Lyon County, in the State of Nevada, together with a statement and affirmation as to the names of the respective presidents of each of said corporations, complainants herein, and together with a statement and affirmation of the names of the respective secretaries of each of said corporations, and the respective places of residence and postoffice addresses of each of said presidents and secretaries of said corporations, complainants herein. And it was further stated in said affidavit in said actions that neither of said corporations, complainants herein, had a managing or business agent, cashier, or secretary within the State of California; and it was also stated in said affidavit, and made to appear therein, that a cause of action existed against each of said defendants in said actions, who are complainants herein; and it was further stated and made to appear in said affidavits so filed in each of said actions, that each of said defendants therein, who are complainants herein, was a

necessary and proper party to the action commenced in Mono County; and it was further made to appear, and was stated in said affidavits so filed in each of said actions commenced in Mono County, that each of the actions so commenced in Mono County related to, and the subject of each of said actions was real property in the State of California, in which such persons, defendants therein, who are complainants herein, and foreign corporations, defendants therein, who are complainants herein, claim a lien and interest in said real property, and that the relief demanded in said actions in Mono County, consists wholly in excluding such persons, defendants therein, who are complainants herein, and foreign corporations, defendants therein, who are complainants herein, from any interest in said real property to which such actions in Mono County relate, and which is the subject of said actions. That the complaint in each of said actions so commenced in the said Superior Court was verified as required by the laws of the State of California, in order to constitute a verified complaint within the meaning of said section 412 of the Code of Civil Procedure of said State. That after the presentation and filing of said affidavit, the said Superior Court of Mono County, State of California, by its order duly given and made in each of said actions, directed that the service of summons in each of said actions be made by the publication thereof, and by said order in each of said actions,

the said Superior Court of Mono County, directed the publication of the summons issued in each of said actions to be made in a newspaper designated in said order as the newspapers most likely to give notice to the person to be served with said summons, and provided in said order that the said summons should be published at least once a week for two successive months; and the Court in said order directed that a copy of the summons, and a copy of the complaint in each of said actions, be forthwith deposited in the postoffice, directed to each of the persons to be served at his place of residence; and further, in each of said orders directed that a copy of the summons and complaint be forthwith deposited in the postoffice, directed to the persons named in said affidavit, as the presidents and secretaries, respectively, of said corporations, at the place of residence of said persons, and that the same be directed to said named persons as such presidents, and as such secretaries; and it was also further provided in each of said orders that a copy of the summons and a copy of the complaint be forthwith deposited in the postoffice, directed to each of said corporations at its residence and principal place of business; and it was further in each of said orders directed, that the postage be prepaid on each of said copies of summons and copies of complaints so to be addressed and deposited in the postoffice. That after the making

of said order in each of said actions commenced in said Mono County, directing the publication and mailing of said copy of summons and said copy of complaint, and prior to December 28th, 1904, the plaintiff in said actions commenced in said Mono County, caused a copy of the summons in each of said actions, and a copy of the complaint in each of said actions to be personally served upon each of the individual complainants herein, and the said plaintiff in each of said actions in Mono County, prior to the 28th day of December, 1904, caused a copy of the summons in each of said actions, and a copy of the complaint in each of said actions to be delivered to the presidents of each of the said corporations, complainants herein, and to the secretaries of each of the corporations, complainants herein. That the said plaintiff in each of said actions in Mono County, after the making of said order directing the publication of said summons in each of said actions, caused the said summons in each of said actions to be published in the newspapers designated in said order, once a week for two months, and that said publication of said summons in each of said actions commenced on the 28th day of October, 1904; and said plaintiff forthwith after the making of said order in each of said actions commenced in Mono County, caused to be deposited in the United States postoffice a copy of the complaint, and a copy of the summons in each of said

actions, addressed to the defendants in said actions, who are complainants herein, at their respective places of residence, with the postage thereon prepaid, and caused a copy of said summons in each of said actions, and a copy of the complaint in each of said actions, to be deposited in the postoffice, and addressed to each of the presidents, and to each of the secretaries, as such, of each of said corporations, at the places of residence of said presidents and secretaries, respectively, with the postage thereon prepaid; and deposited in the United States postoffice a copy of the summons in each of said actions, and a copy of the complaint in each of said actions addressed to each of the corporations, complainants herein, at its residence and principal place of business. That affiant did not on the 6th day of August, 1902, or at any time thereafter, or at any time within two years prior thereto, claim any right to appropriate or divert the water of the east fork of the Walker River, or the west fork of the Walker River in the State of Nevada; but did for many years prior to the 6th day of August, 1902, divert and appropriate and use the waters of the East Fork of the Walker River, and the waters of the West Fork of the Walker River in the State of California, and claimed the right so to do; and did so divert and appropriate and use said water under such claim of right, and adverse to all the world. That the Rickey Land and Cattle Company, a corporation, was organized on the 24th day of July,

1902, by Thomas B. Rickey, the affiant, Charles W. Rickey and Alice B. Rickey, who were the incorporators and subscribers to the capital stock of said corporation; and the said corporation was not organized on the 6th day of August, 1902, by the affiant, and was at no time organized by the affiant, except in so far as he participated with those associated with him in the organization of said corporation. That the purposes for which said Rickey Land and Cattle Company was organized were, "To buy and sell and own and to reclaim farm and grass lands; to locate and buy and sell water and water rights, and to use the same for irrigation and mechanical purposes; to build and construct dams and reservoirs, and to store water therein for the purpose of irrigation and distribution, and sale; to buy and sell and raise all kinds of livestock, hay and grain, and to do all kinds of farming business, and to engage in all kinds of agricultural and dairy pursuits and business, and to engage in and to do a general merchandising business all in the States of California, Nevada, and elsewhere." That pursuant to the purposes expressed in said articles of incorporation the said corporation acquired by conveyance certain lands and certain water rights of said Thomas B. Rickey, the affiant, on the 6th day of August, 1902, part of which said lands are described in the complaints in said suits commenced in said Mono County, referred to in the complaint herein. That the said Rickey Land and Cattle

Company acquired by conveyance from said Thomas B. Rickey, all his right, title and interest to certain water rights, and rights to the use of water; and the said water rights, and rights to the use of water, are in part the water rights, and rights to the use of water described and mentioned in the said complaints in said actions commenced in Mono County; but the said water rights so acquired by the said Rickey Land and Cattle Company from the said Thomas B. Rickey, are not the same rights to water, and rights to the use of water alleged in said complaints in said Mono County in this, that since the conveyance of said lands by said Thomas B. Rickey, and said water rights, and the right to the use of water, to said Rickey Land and Cattle Company, which conveyance was made, executed and delivered on the 6th day of August, 1902, the Rickey Land and Cattle Company has at all times appropriated and diverted the water described in the said complaints in said actions commenced in said Mono County, for a beneficial purpose, and has used the same for a beneficial purpose, and has diverted, appropriated, and used such water adversely to all the world, and under a claim of right so to do, and has so diverted, appropriated and used such water continuously, uninterruptedly, notoriously, adversely, exclusively and peaceably.

That under the laws of the State of California, the adverse possession and use of water for a period of five years by the person or corporation claiming

the right to said water, and its grantors and predecessors in interest, confers a title, and right to the continued use of said water. By the laws of the State of California it is provided:

“Occupancy for any period confers a title sufficient against all except the State and those who have title by prescription, accession, transfer, will or succession. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.”

That Charles Rickey is now, and ever since the organization of said corporation has been the owner of, and entitled to all the rights, privileges and profits growing out of one hundred shares of the capital stock of said Rickey Land and Cattle Company; and that Alice B. Rickey is now, and ever since the organization of said corporation has been the owner of, and entitled to all the rights, privileges and profits growing out of one hundred shares of the capital stock of said Rickey Land and Cattle Company. That each of said persons, Charles Rickey and Alice B. Rickey, became owners of said stock by subscription to the capital stock of said corporation. That said Charles Rickey and Alice B. Rickey are, and at all times since the organization of said corporation have been in the absolute control of said stock, free from any right and interference,

management or direction of the said Thomas B. Rickey, affiant herein. And the said Charles Rickey and Alice B. Rickey have, and at all times since the organization of said corporation have had, the right to receive and have received, all the profits earned by said stock so owned and held by them, for their own use, benefit and enjoyment, and are subject therein to all burdens and liabilities attaching to the ownership of said stock. That the said Thomas B. Rickey, affiant herein, has no interest whatever, legal or equitable, in the said stock so owned and held by said Charles Rickey and said Alice B. Rickey. That the value of said stock so owned and held by said Charles Rickey and Alice B. Rickey is about forty thousand dollars. That the Rickey Land and Cattle Company, a corporation, mentioned in the complaint herein, is not a defendant in the original complaint filed in that certain action No. 731, referred to in the complaint herein, wherein Miller & Lux is complainant, and affiant and others are defendants; nor has the said corporation been made a party by any order of this Court. Affiant denies and says that it is not true that the only person really or at all interested in said corporation, the Rickey Land and Cattle Company, or really, or otherwise, owning any of the stock thereof, is the said affiant Thomas B. Rickey. And denies and says it is not true that the persons,

other than Thomas B. Rickey, affiant, forming the said corporation, the Rickey Land and Cattle Company, or holding the stock thereof, are only nominees of the said Thomas B. Rickey, or that they hold their said stock solely, or at all, for him, or for his benefit. That in the complaints in the actions commenced in Mono County, State of California, as alleged in the complaint herein, it is not alleged that the lands described in said complaints, or any of them, were conveyed to the plaintiff in said actions by the said Thomas B. Rickey, nor is any reference therein had to any conveyance or transfer by said Thomas B. Rickey to the said plaintiff in said action. Affiant denies and says that it is not true that the complainants James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, DeWitt Crowninshield, M. J. Green, C. F. Meissner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green and Spragg-Woodcock Ditch Company, a corporation, or either of them, filed in this Court the cross-bills, or any cross-bills, alleged in the complaint herein, to have been filed but in this behalf alleges that the said so-called cross-bills were not brought as such, and were and are, original bills. Affiant denies and says that it is not true that the issues, or any issue tendered by such complaints in said two actions, or either of them, brought by the defendant, the Rickey Land

and Cattle Company, herein, as plaintiff in said actions, against the complainants herein and other persons, are, so far as concerns complainants herein, or either of them, the same issues, or any issue, which were tendered by the said alleged cross-bills or either of them, mentioned in the complaint herein so filed in this court.

Affiant denies that at the time of filing by the defendant, the Rickey Land and Cattle Company, herein, of its complaints in the Superior Court of the said county of Mono, State of California, or at any other time, the said defendant, the Rickey Land and Cattle Company, did not have or claim to have, or does not now have or claim to have any right in or to any of the waters of said Walker River, or of any branch or tributary thereof, except such right or rights, if any, as was acquired by said Rickey Land and Cattle Company by said conveyance alleged in the complaint herein to have been made, to wit, from the said Thomas B. Rickey, affiant herein. Denies and says that it is not true that the defendant herein, Rickey Land and Cattle Company, in and by the actions, or either of them, commenced in the said Superior Court of the County of Mono, State of California, intended, or that the necessary or any effect of said actions, or either of them, is to bring on for trial or determination in said Superior Court, the same issues, or any issue, presented by the said cross-bills, or either of

them, alleged to have been filed by the complainants herein in the said action, No. 731, wherein Miller & Lux is complainant, and the said affiant and others are defendants. And denies and says that it is not true that the defendant herein, Rickey Land and Cattle Company, intended, and that the necessary, or any effect of said actions commenced in said Superior Court of Mono County, is to obtain from said Superior Court a judgment determining the issues, or any of them, presented by the said cross-bills, or either of them, in said complaint mentioned, in advance of a determination of the same by this Court, or to do anything else therein, or to cause any other action to be taken by said court for the purpose of defeating, or which will defeat, the jurisdiction of this Court in the said suit alleged in complainants' complaint.

And the said affiant denies and says that it is not true that the defendant herein, Rickey Land and Cattle Company, intended, and that the necessary, or any, effect of said actions, or either of them, so commenced in the Superior Court of Mono County, is to hinder or embarrass or will hinder or embarrass, or that any action of said defendant in said Superior Court of Mono County, or any action of said Superior Court of Mono County in said actions, or either of them, will hinder or embarrass this Court in the trial of the issues, or any of them, in said suit, or in the enforcement of any decree which

this Court may render in the said suit so pending before it. And denies and says that it is not true that the further prosecution of said actions, or either of them, as against the complainants herein, or either of them, would be in derogation of the jurisdiction of this Court, or of the rights, or any right of the complainants, or either of them, in the cross suits alleged in the complaint herein. And in this behalf affiant alleges that the said actions so commenced in Mono County, and each of them, are brought in good faith, regardless of any effect they may have upon the said suit of Miller & Lux vs. T. B. Rickey and others, No. 731, in this cause, for the purpose of having and procuring a judgment quieting the title of said Rickey Land and Cattle Company to the said waters, water rights, and the use of the waters described in said complaints in said actions commenced in Mono County, State of California, and are so brought at this time, because the said Rickey Land and Cattle Company, and its officers, deem such action prudent and necessary, because of the old age and infirmity of many of the witnesses, whose testimony is necessary to establish the rights of said Rickey Land and Cattle Company to the said waters, and rights to the waters, and rights to the use of waters described in said complaints in said actions commenced in Mono County, State of California, as against the defendants in said suits, and because the relief sought in

such actions so commenced in the Superior Court of Mono County, cannot be obtained in any other court. Affiant further denies and says that it is not true that all, either, or any of the said acts, doings, or claims of the said defendant, Rickey Land and Cattle Company, herein, are contrary to equity or good conscience, or that they, or either of them, tend to the manifest, or any wrong, injury, or oppression of the complainants, or either of them, in the premises. Denies and says that it is not true that on the 5th day of January, 1905, or at any time prior to the 25th day of January, 1905, the said writs of subpoena issued in the said case of Miller & Lux, complainant, vs. T. B. Rickey and others, defendants, No. 731, upon the alleged cross-bills of the complainants herein, or either of them, were served upon said affiant. And in this behalf states that said writs of subpoena were served upon this affiant on the 25th day of January, 1905. And denies and says that it is not true that the summons issued in the said actions commenced in the Superior Court of Mono County were served on the complainants herein on the 7th day of January, 1905; but in that behalf states that said summons in said actions were served upon the complainants herein prior to the 28th day of December, 1904, and that the complainants herein at and prior to the 28th day of December, 1904, appeared and filed demurrers in said actions so commenced in the Superior Court of Mono

County, as herein stated. Wherefore, the affiant, on behalf of said Rickey Land and Cattle Company, prays that this Court deny the petition herein.

THOMAS B. RICKEY.

Subscribed and sworn to before me this 13th day of March, A. D. 1905.

[Notarial Seal] CHAS. H. PETERS,
Notary Public in and for Ormsby Co., Nevada.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

JAMES NICHOL et al.,

Complainants,

vs.

RICKEY LAND AND CATTLE COMPANY (a
Corporation),

Defendant.

Affidavit of Charles Rickey.

State of California,
County of Inyo,—ss.

Charles Rickey, being duly sworn, deposes and says: That he is, and at all the times mentioned herein was, a citizen of the State of California, over the age of twenty-one years and a resident of Topaz, County of Mono, State of California. That he is and since the organization of the corporation defendant has been one of the stockholders of said defendant

corporation, and has at all times since the organization of said corporation owned and held in his own name and right one hundred (100) shares of the capital stock of said corporation, which said one hundred (100) shares have at all times been of the value of at least twenty thousand (\$20,000.00) dollars. That affiant became the owner of said shares by subscription to the capital stock of said corporation.

That Thomas B. Rickey does not now own, nor has he at any time owned any interest in said one hundred (100) shares of the said capital stock of said corporation, and the said stock is now under the absolute and exclusive dominion and control of affiant and affiant is liable and answerable for all burdens and liabilities which attach to the owner of such stock, and is entitled, in his own right, to receive and enjoy all the profits and earnings which accrue to said one hundred (100) shares of said capital stock, to the exclusion of said Thomas B. Rickey.

That the title of the defendant corporation to said water of the west fork of the Walker River mentioned in the complaint herein, and the title of the defendant corporation to the water of the east fork of the Walker River mentioned in the complaint herein, is such as was conveyed to it by said Thomas B. Rickey and in addition thereto, such title as has been acquired by said defendant corporation since its organization by the diversion and appropriation of said defendant corporation of the waters of the

said West Fork of the Walker River and the said East Fork of the Walker River which said diversion and appropriation of said waters, by said corporation to the extent alleged in said complaints in said Superior Court of Mono County, California, to wit, 1575 cubic feet per second from said West Fork of said Walker River and 504 cubic feet per second from said East Fork of said Walker River, has at all times been under claim of right against the whole world, and has at all times since the organization of said corporation been open, notorious, uninterrupted, exclusive, continuous and adverse to the said plaintiffs herein and to all the world.

CHARLES W. RICKEY.

Subscribed and sworn to before me this 10th day of March, 1905.

[Notarial Seal]

P. W. FORBES,

Notary Public in and for the County of Inyo, State of California.



In the Circuit Court of the United States, Ninth Circuit, for the District of Nevada.

JAMES NICHOL et al.,

Complainants,

vs.

RICKEY LAND AND CATTLE COMPANY (a Corporation),

Defendant.

Affidavit of Alice B. Rickey.

State of Nevada,
County of Ormsby,—ss.

Alice B. Rickey, being duly sworn, deposes and says: That she is, and at all the times mentioned herein was, a citizen of the State of Nevada, over the age of twenty-one years and a resident of Carson City, Ormsby County, State of Nevada. That she is and since the organization of the corporation defendant has been one of the stockholders of said defendant corporation, and has at all times since the organization of said corporation owned and held in her own name and right one hundred (100) shares of the capital stock of said organization, which said one hundred (100) shares have at all times been of the value of at least twenty thousand (\$20,000.00) dollars. That affiant became the owner of said shares by subscription to the capital stock of said corporation. That Thomas B. Rickey does not now own, nor has he at any time owned, any interest in said one hundred (100) shares of the capital stock of said corporation, and the said stock is now under the absolute and exclusive dominion and control of affiant, and affiant is liable and answerable for all burdens and liabilities which attach to the owner of such stock, and is entitled, in her own right, to receive and enjoy all the profits and earnings which accrue to said one hundred (100) shares of said

capital stock, to the exclusion of said Thomas B. Rickey. That the title of the defendant corporation to said water of the West Fork of the Walker River mentioned in the complaint herein, and the title of the defendant corporation to the water of the East Fork of the Walker River mentioned in the complaint herein, is such as was conveyed to it by said Thomas B. Rickey, and in addition thereto, such title as has been acquired by said defendant corporation since its organization by the diversion and appropriation of said defendant corporation of the waters of the said west fork of the Walker River and the said East Fork of the Walker River which said diversion and appropriation of said waters by said corporation to the extent alleged in said complaints in said superior court of Mono county, California, to wit: 1575 cubic feet per second from said West Fork of said Walker River and 504 cubic feet per second from said East Fork of said Walker River, has at all times been under claim of right against the whole world, and has at all times since the organization of said corporation been open, notorious, uninterrupted, exclusive, continuous and adverse to the said plaintiffs herein and to all the world.

ALICE B. RICKEY.

Subscribed and sworn to before me this 13th day of March, A. D. 1905.

[Notarial Seal]

CHAS. C. PETERS,

Notary Public in and for Ormsby Co., Nevada.

[Endorsed]: No. 796. In the Circuit Court of the U. S., Ninth Circuit, District of Nevada. James Nichol, et al., Complainants, vs. Rickey Land and Cattle Company, a Corporation, Defendant. Affidavit of Thomas B. Rickey, Charles Rickey and Alice B. Rickey to the order to show cause why injunction should not issue restraining action in Mono County. Filed March 13, 1905. T. J. Edwards, Clerk.

District of Nevada—ss.

In the Circuit Court of the United States for the District of Nevada.

At a term thereof begun and held at Carson City, in said district, on the 19th day of March, 1906—Present, Honorable THOMAS P. HAWLEY, Judge—the following order was made and entered of record, to wit:

No. 796.

JAMES NICHOL, F. FEIGENSPAN, ANGUS
McLEOD, MARY T. SHAW, DEWITT
CROWNINSHIELD, M. J. GREEN, C. F.
MEISSNER, HAMILTON WISE, J. F.
HOLLAND, C. F. HOLLAND, THOS.
HALL, E. S. CROSS, D. J. BUTLER, J. S.
SWEETMAN, JOHN COMPSTON, J. C.
MILLS, A. W. GREEN and SPRAGG-
WOODCOCK DITCH COMPANY, (a Cor-
poration),

Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),

Respondents.

Order for Injunction Pendente Lite.

The motion of the above-named complainants requiring the defendant, the Rickey Land and Cattle Company, a corporation, to show cause why an injunction should not issue pending this suit according to the prayer of the bill of complaint herein, having come on regularly to be heard upon the bill, which is duly verified, and upon the affidavits filed herein by the respondent in opposition thereto, and the Court having heard the arguments of counsel for the respective parties, and the same having been

duly considered by the Court, and it appearing to the Court that the complainants are entitled to an injunction pendente lite, according to the prayer of their bill herein: Now, therefore, it is hereby ordered, adjudged and decreed that the said respondent, the Rickey Land and Cattle Company, a corporation, its agents, servants and attorneys, and all persons acting in aid of any of them, be, and they are hereby enjoined and restrained from further prosecuting, as against these complainants or any of them, either of the two actions brought by said respondent, the Rickey Land and Cattle Company, on the 15th day of October, 1904, in the Superior Court of the County of Mono, State of California, against said complainants above named, and others, as defendants, and respectively numbered 1055 and 1056 on the register of said Superior Court, and from taking any further step whatsoever in either of said actions as against these complainants, or either of them, pending the final hearing and determination of this suit, and until the further order of this Court.

And it further appearing to the Court that this injunction may be safely granted without requiring any bond from said complainants herein, it is further ordered that the said writ of injunction may be issued herein as aforesaid without any bond being furnished by complainants.

The above is a true copy from the record of an order made by said court on the 25th day of June, 1906.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

No. 796.

JAMES NICHOL, F. FEIGENSPAN, ANGUS McLEOD, MARY T. SHAW, DEWITT CROWNINSHIELD, M. J. GREEN, C. F. MEISSNER, HAMILTON WISE, J. F. HOLLAND, C. F. HOLLAND, THOS. HALL, E. S. CROSS, D. J. BUTLER, J. S. SWEETMAN, JOHN COMPSTON, J. C. MILLS, A. W. GREEN, and SPRAGG-WOODCOCK DITCH COMPANY (a Corporation),

Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),

Defendant.

Petition for Appeal.

The above-named defendant, Rickey Land and Cattle Company, a corporation, conceiving itself aggrieved by the interlocutory order and decree made on the 25th day of June, 1906, and entered on the 25th day of June, 1906, in the above-entitled cause, wherein it was ordered and decreed that the said defendant

be enjoined and restrained from further prosecuting as against James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, Dewitt Crowninshield, M. J. Green, C. F. Meissner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green, and Spragg-Woodcock Ditch Company, a corporation, those certain actions brought by the defendant in the Superior Court of Mono County, State of California, and from taking any further steps in said action pending the final hearing and determination of the said above-entitled suit and until the further order of said Circuit Court. And the said Rickey Land and Cattle Company, a corporation, prays that this, its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, may be allowed and that a transcript of the record and proceedings and papers upon which said interlocutory decree, order and judgment was made, duly authenticated, may be sent to said United States Court of Appeals for the said Ninth Circuit. And now, at the time of filing this petition for appeal, the said Rickey Land and Cattle Company, a corporation, appellant, files an assignment of errors, setting up separately and particularly each error asserted and intended to be argued in the United States Circuit Court of Appeals for the said Ninth Circuit.

And your petitioner will ever pray.

[Corporate Seal]

RICKEY LAND AND CATTLE CO., INC.

By T. B. RICKEY, President,
Defendant and Appellant.

JAMES F. PECK,
CHAS. C. BOYNTON,
Solicitors for Defendant.

[Endorsed]: No. 796. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. James Nichol et al., Complainants, vs. The Rickey Land and Cattle Company, a Corporation, Defendant. Petition for Appeal. Filed July 23, 1906. T. J. Edwards, Clerk. James F. Peck, Charles C. Boynton, Solicitors for Defendant and Appellant. Offices, 911 Laguna St., San Francisco, Cal.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

No. 796.

JAMES NICHOL, F. FEIGENSPAN, ANGUS McLEOD, MARY T. SHAW, DEWITT CROWNINSHIELD, M. J. GREEN, C. F. MEISSNER, HAMILTON WISE, J. F. HOLLAND, C. F. HOLLAND, THOS. HALL, E. S. CROSS, D. J. BUTLER, J. S. SWEETMAN, JOHN COMPSTON, J. C. MILLS, A. W. GREEN, and SPRAGG-WOODCOCK DITCH COMPANY (a Corporation),

Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),

Defendant.

Assignment of Errors.

Assignment of errors on the appeal from the order and decree made on the 25th day of June, 1906, and entered on the 25th day of June, 1906, in the above-entitled cause, on the complaint of James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, Dewitt Crowninshield, M. J. Green, C. F. Meissner, Hamilton Wise, J. F. Holland, C. F. Holland, Thomas Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John

Compston, J. C. Mills, A. W. Green, and Spragg-Woodcock Ditch Company, a corporation, which said order and decree enjoined The Rickey Land and Cattle Company, a corporation, from prosecuting two certain actions in the Superior Court of Mono County, State of California, as against the said complainants, and said Rickey Land and Cattle Company, a corporation, says that in the record and proceedings in the above-entitled action there is manifest error in this, to wit:

First.—The Court erred in making said order and decree appealed from in this, that the cross-complaints, and each of them, of the said complainants, wherein the said cross-complainants sought to have determined by said Circuit Court of the United States, Ninth Circuit, District of Nevada, the rights of said cross-complainants to the use of the water of Walker River, as between said cross-complainants and the Rickey Land and Cattle Company, a corporation, and T. B. Rickey, the predecessor in interest of the said Rickey Land and Cattle Company, upon which said cross-complaints said order and decree was predicated, was not a proper cross-complaint in the action in which the same were filed as against T. B. Rickey, or as against his successor in interest, said Rickey Land and Cattle Company, because the said rights sought to be determined between each of the said cross-complainants in said cross-complaints, as against T. B. Rickey and his successor, the said

Rickey Land and Cattle Company, a corporation, were in no manner defensive to the main action of Miller & Lux vs. T. B. Rickey and said cross-complainants and others, nor was the determination of the controversy sought to be made by said cross-complaints between said cross-complainants and said T. B. Rickey, or his successor in interest, said Rickey Land and Cattle Company, necessary in order that either of the said cross-complainants might make a full and complete defense of all rights of said cross-complainants in the said case of Miller & Lux vs. T. B. Rickey and said cross-complainants and others.

Second.—The Court erred in making said order and decree appealed from in this, that the cross-complaints of the complainants herein, filed by them in the action of Miller & Lux vs. T. B. Rickey and said cross-complainants and others, wherein the said cross-complainants, complainants herein, sought to have determined by said Circuit Court of the United States, Ninth Circuit, District of Nevada, the rights to the use of the water of Walker River, between said cross-complainants and T. B. Rickey and the Rickey Land and Cattle Company, upon which said cross-complaints said order and decree appealed from was predicated, was not a proper cross-complaint in said action of Miller & Lux vs. T. B. Rickey and others, because the said controversy made between said cross-complainants and T. B. Rickey and his successor in interest, the said Rickey Land and Cattle Company

was a controversy between residents of the same state, to wit, residents of the State of Nevada, and the said controversy and the determination of said controversy between said cross-complainants and T. B. Rickey and his successor in interest, the said Rickey Land and Cattle Company, was in no way necessary or pertinent to the full determination of the defense of either of the said cross-complainants in said suit of Miller & Lux vs. T. B. Rickey and said cross-complainants and others, and neither of the said cross-complaints was in any manner ancillary to said suit of Miller & Lux vs. T. B. Rickey and said cross-complainants and others, and the said Circuit Court of the United States, Ninth Circuit, District of Nevada, had no jurisdiction to determine the controversy sought to be made by each of said cross-complainants between said cross-complainants and said T. B. Rickey, or his successor in interest, the said Rickey Land and Cattle Company, all of whom were residents of the State of Nevada.

Third.—That each of said cross-complaints filed by said complainants herein in the action of Miller & Lux vs. T. B. Rickey and others, in so far as it makes a party thereto, the Rickey Land and Cattle Company, was not a proper cross-complaint in the action of Miller & Lux vs. T. B. Rickey and the said cross-complainants and others, because each of said cross-complaints introduces a new party to said action, to wit, the Rickey Land and Cattle Company,

and said order and decree appealed from, predicated upon said cross-complaints, was error.

Fourth.—That the jurisdiction of the Superior Court of Mono County had attached to all the defendants in said actions in Mono County by the service of summons in said actions upon all the defendants therein, including the complainants herein, before the writs of subpoena ad respondendum issued out of the said Circuit Court of the United States, Ninth Circuit, District of Nevada, upon and pursuant to the prayers in each cross-complaint filed by the complainants herein in said action of Miller & Lux vs. T. B. Rickey and others, had been served, so that the Superior Court of Mono County acquired jurisdiction to quiet the title of said Rickey Land and Cattle Company to the use of the waters of the Walker River in the State of California, before the said Circuit Court of the United States, Ninth Circuit, District of Nevada, acquired any jurisdiction of the defendant, Rickey Land and Cattle Company, by reason of the filing of said cross-complaints, and it was, therefore, error for the Circuit Court of the United States, Ninth Circuit, of the District of Nevada to make its order and decree appealed from based upon the said cross-complaints.

Fifth.—That the said actions in Mono County were commenced and prosecuted to quiet the title of the plaintiff therein, the Rickey Land and Cattle Company, a corporation, to certain waters of the Walker

River in the State of California, and to procure a judgment of the Superior Court of Mono County quieting the title of the Rickey Land and Cattle Company, a corporation, to certain waters of the Walker River, and to the use of certain of the waters of the Walker River in the State of California, as against the said complainants herein and others, and the said action of Miller & Lux vs. T. B. Rickey and others in the Circuit Court of the United States, Ninth Circuit, District of Nevada, was brought to enjoin T. B. Rickey and the said complainants herein from diverting the waters of said Walker River, and the said Circuit Court erred in making the decree herein appealed from, because no proceeding which had been taken, nor any proceeding which might be taken, nor any judgment which might be rendered in the Superior Court of Mono County in said actions commenced and prosecuted therein, could in any manner, way or form, impair, infringe upon or interfere with the jurisdiction of the said Circuit Court of the United States, Ninth Circuit, District of Nevada, in the said case of Miller & Lux vs. T. B. Rickey and others, including the complainants herein, nor could the same in any manner, way or form impair, infringe upon or interfere with the jurisdiction of the said Circuit Court of the United States, Ninth Circuit, District of Nevada, in the said case of Miller & Lux vs. T. B. Rickey and others, including the complainants herein, so far as either of the said com-

plainants herein had a right to invoke the powers of the said Circuit Court of the United States, Ninth Circuit of the District of Nevada.

Sixth.—That the said actions in Mono County were commenced and prosecuted to quiet the title of the plaintiff herein, the Rickey Land and Cattle Company, a corporation, to certain waters and the use of certain waters of the Walker River in the State of California, and to procure judgment of the superior court in said Mono County quieting the title of the Rickey Land and Cattle Company, as against the said complainants herein and others, and the said action of Miller & Lux vs. T. B. Rickey and others, including complainants herein, in the Circuit Court of the United States, Ninth Circuit, District of Nevada, was brought to enjoin T. B. Rickey and others, including complainants herein, from diverting the waters of said Walker River, and the interlocutory order and decree herein appealed from was rendered in a proceeding claimed to be ancillary to said action of Miller & Lux vs. T. B. Rickey and others, said Rickey Land and Cattle Company was not a party to said action of Miller & Lux vs. T. B. Rickey et al., and would not be bound by the judgment or decree rendered therein, and the said Circuit Court of the United States, Ninth Circuit, District of Nevada, erred, therefore, in restraining the Rickey Land and Cattle Company from prosecuting said actions in said Mono County.

Seventh.—That the said Circuit Court, Ninth Circuit, District of Nevada, had no jurisdiction to try and determine the rights to the use by T. B. Rickey of the waters of Walker River in the State of California, nor the title of T. B. Rickey to the waters of Walker River in the State of California, nor the use by the Rickey Land and Cattle Company, a corporation, of the waters of the Walker River in the State of California, nor the title of the Rickey Land and Cattle Company to the waters of the Walker River in the State of California, in said action of Miller & Lux vs. T. B. Rickey et al., and, therefore, had no jurisdiction over the Rickey Land and Cattle Company, the successor in interest of T. B. Rickey, to the use of said water and the right to the use of said water, because the water was in the State of California, and the use of said water and the diversion of said water was made by said T. B. Rickey and by the said Rickey Land and Cattle Company, his successor, in the State of California, and the said water and the land upon which the use of the said water was made was all in the State of California and not in the State of Nevada, and the said Circuit Court of the United States, Ninth Circuit, District of Nevada, has no jurisdiction to try the rights of said Rickey Land and Cattle Company to the use of the water of the Walker River or the title of the Rickey Land and Cattle Company to the use of the waters of the Walker River as the successor of T. B. Rickey, and

the said court erred, therefore, in rendering the said order and decree restraining appellant from prosecuting said actions in Mono County.

Eighth.—That the Court had no jurisdiction to render said order and decree appealed from as against the appellant, Rickey Land and Cattle Company.

Ninth.—That it was error for the said Circuit Court of the United States of the District of Nevada to make and render said order and decree appealed from.

Tenth.—That the said complaint upon which said interlocutory order and decree appealed from was granted does not state facts sufficient to entitle the complainants therein to the said interlocutory order and decree.

Eleventh.—That before the cross-complaints filed by the complainants in the action of Miller & Lux vs. T. B. Rickey and others, including complainants, the Rickey Land and Cattle Company, a corporation, was the owner of all the right, title and interest of, in and to the waters of the Walker River, and in and to the use of the waters of the Walker River which the Rickey Land and Cattle Company have since been entitled to and owned, and at the time that the said Rickey Land and Cattle Company acquired its rights

and ownership of the said waters of the Walker River, there was no proceeding or proceedings in the Circuit Court of the United States, Ninth Circuit, District of Nevada, commenced by or on behalf of said complainants, or either of them, affecting or involving the title of said T. B. Rickey, the grantor of the Rickey Land and Cattle Company, thereto, and the said Rickey Land and Cattle Company was not a party to the suit of Miller & Lux vs. T. B. Rickey and others, including said complainants; therefore, the Court erred in enjoining and restraining the prosecution of said suits in Mono County by said interlocutory order and decree appealed from.

In the action of Miller & Lux, a corporation, vs. T. B. Rickey and others, commenced in the Circuit Court of the United States, Ninth Circuit, for the District of Nevada, the Pacific Livestock Company, a corporation, was substituted as complainant, and whenever said action is referred to herein it is intended to include the said action as the same is now pending, with said substituted complainant.

Wherefore, the appellant, the Rickey Land and Cattle Company, prays that the decree of said Circuit Court of the United States, Ninth Circuit, for the District of Nevada, be reversed and the said Circuit Court of the United States, Ninth Circuit, for

the District of Nevada, be ordered to enter an order and decree dissolving the injunction and restraint made by the said order and decree appealed from.

[Corporate Seal]

RICKEY LAND AND CATTLE CO., INC.,

By T. B. RICKEY, President,

Defendant and Appellant.

JAMES F. PECK,

CHARLES C. BOYNTON,

Solicitors for said Corporation Appellant.

[Endorsed]: No. 796. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. James Nichol et al., Complainants, vs. The Rickey Land and Cattle Company, a Corporation, Defendant. Assignment of Errors. Filed July 23, 1906. T. J. Edwards, Clerk. James F. Peck, Charles C. Boynton, Solicitors for Defendant and Appellant. Offices 911 Laguna St., San Francisco, Cal.

*In the Circuit Court of the United States, Ninth
Circuit, District of Nevada.*

No. 796.

JAMES NICHOL, F. FEIGENSPAN, ANGUS
McLEOD, MARY T. SHAW, DEWITT
CROWNINSHIELD, M. J. GREEN, C. F.
MEISSNER, HAMILTON WISE, J. F.
HOLLAND, C. F. HOLLAND, THOS.
HALL, E. S. CROSS, D. J. BUTLER, J. S.
SWEETMAN, JOHN COMPSTON, J. C.
MILLS, A. W. GREEN, and SPRAGG-
WOODCOCK COMPANY (a Corporation),
Complainants,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),
Defendant.

Order Allowing Appeal.

It is ordered that the appeal of the Rickey Land and Cattle Company, appellant in the above-entitled cause, to the United States Circuit Court of Appeals for the Ninth Circuit, from the interlocutory order and decree made in the above-entitled court on the 25th day of June, 1906, in the above-entitled cause, be, and the same hereby is, allowed, and that a certified transcript of the record and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals. And it is further ordered

that the bond on appeal be fixed at the sum of five hundred dollars (\$500), the same to act as a bond for costs and damages on appeal.

Dated San Francisco, Cal., July 23, 1906.

WM. W. MORROW,

Circuit Judge.

[Endorsed]: No. 796. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. James Nichol et al., Complainants, vs. The Rickey Land and Cattle Company, a Corporation, Defendant. Order for Appeal. Filed July 23, 1906. T. J. Edwards, Clerk. James F. Peck, Charles C. Boynton, Solicitors for Defendant and Appellant. Offices 911 Laguna St., San Francisco, Cal.

Bond on Appeal.

Know all men by these presents, that we, Rickey Land and Cattle Company, as principal, and S. Trask and H. C. Cutting, as sureties, are held and firmly bound unto James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, De Witt Crowninshield, M. J. Green, C. F. Meisner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green, and the Spragg & Woodcock Ditch Company, a corporation, in the full and just sum of five hundred dollars, to be paid to the said James Nichol, F. Feigenspan, Angus McLeod, Mary T.

Shaw, De Witt Crowninshield, M. J. Green, C. F. Meisner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green, and the Spragg & Woodcock Ditch Company, a corporation, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 23d day of July, in the year of our Lord one thousand nine hundred and six. Whereas, lately at a Circuit Court of the United States for the Ninth Circuit, District of Nevada, in a suit depending in said court, between James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, De Witt Crowninshield, M. J. Green, C. F. Meisner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green, and the Spragg & Woodcock Ditch Company, a corporation, are complainants, and the Rickey Land and Cattle Company, a corporation, is defendant, an interlocutory order and decree was rendered against the said Rickey Land and Cattle Company and the said Rickey Land and Cattle Company, a corporation, having obtained from said court an order allowing it to appeal to reverse the said order and decree in the aforesaid suit, and a citation directed to the said James Nichol, F. Feigenspan, Angus Mc-

Leod, Mary T. Shaw, De Witt Crowninshield, M. J. Green, C. F. Meisner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green and the Spragg & Woodcock Ditch Company, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, that if the said Rickey Land and Cattle Company, a corporation, shall prosecute its said appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Corporate Seal]

RICKEY LAND AND CATTLE CO., INC.

By T. B. RICKEY, President. [Seal]

S. TRASK. [Seal]

H. C. CUTTING. [Seal]

Acknowledged before me the day and year first above written.

[Court Seal]

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States of America,
District of Nevada,—ss.

S. Trask and H. C. Cutting, being duly sworn, each for himself deposes and says that he is a freeholder

in said district and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

S. TRASK.

H. C. CUTTING.

Subscribed and sworn to before me, this 23d day of July, A. D. 1906.

[Court Seal]

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 796. United States Circuit Court, District of Nevada, for the Ninth Circuit. James Nichol, et al., Complainants, vs. Rickey Land and Cattle Company, a Corporation, Defendant. Bond on Appeal. Form of Bond and Sufficiency of Sureties Approved. Wm. W. Morrow, Judge. Filed July 23, 1906. T. J. Edwards, Clerk.



In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

No. 796.

JAMES NICHOL et al.,

Complainants,

vs.

RICKEY LAND AND CATTLE COMPANY,

Respondent.

Clerk's Certificate to Transcript.

I, T. J. Edwards, Clerk of the Circuit Court of the United States, Ninth Circuit, District of Nevada, do hereby certify that the foregoing fifty-one typewritten pages numbered from 1 to 51, inclusive, are a true copy of the record and proceedings in the cause therein entitled. That the cost of this record is \$45.80, and the same has been paid by the appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of said, at Carson City, Nevada, this 30th day of August, 1906.

[Seal]

T. J. EDWARDS,

Clerk.

Citation on Appeal.

UNITED STATES OF AMERICA—ss.

The President of the United States, to James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, Dewitt Crowninshield, M. J. Green, C. F. Meissner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green, and Spragg-Woodcock Ditch Company, a Corporation, and Their Solicitors, Messrs. Mack and Farrington and Geo. S. Green, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San

Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States Circuit Court for the District of Nevada, wherein Rickey Land and Cattle Company, a corporation, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable W. W. MORROW, United States Circuit Judge for the United States Circuit Court, Ninth Circuit, this 23d day of July, A. D. 1906.

WM. W. MORROW,
United States Circuit Judge.

Due service of the within citation admitted this 3d day of July, 1906.

MACK & FARRINGTON,
Solicitors for James Nichol et al.

[Endorsed]: No. 796. U. S. Circuit Court, District of Nevada, for the Ninth Circuit. James Nichol et al., Complainants, vs. Rickey Land and Cattle Company (a Corporation), Defendant. Citation on Appeal. Filed August 30th, 1906. T. J. Edwards, Clerk U. S. Circuit Court, District of Nevada.

[Endorsed]: No. 1372. United States Circuit Court of Appeals for the Ninth Circuit. Rickey Land and Cattle Company, a Corporation, Appellant, vs. James Nichol, F. Feigenspan, Angus McLeod, Mary T. Shaw, Dewitt Crowninshield, M. J. Green, C. F. Meissner, Hamilton Wise, J. F. Holland, C. F. Holland, Thos. Hall, E. S. Cross, D. J. Butler, J. S. Sweetman, John Compston, J. C. Mills, A. W. Green, and Spragg-Woodcock Ditch Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Nevada.

Filed September 5, 1906.

F. D. MONCKTON,

Clerk.